IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO NO.39 of 1990

DATE OF DECISION: October 28, 2006

Model Line Colonisers Private Limited

….Appellant.

VERSUS

Surinder Singh Bagga and another

…..Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL

PRESENT: Shri O.P.Goyal, Senior Advocate with
Ms.Mamta B. Jain, Advocate for the appellant.
Shri A.R. Takkar, Advocate for the respondents.

Viney Mittal,J.(Oral).

The present appeal has been filed by the plaintiff. The challenge is to an order dated August 11,1990 passed by the learned Additional District Judge, Ludhiana, whereby an application filed by the plaintiff appellant under Order 41 Rule 9 of the Code of Civil Procedure for re-admission and restoration of the appeal, which was dismissed on December 1, 1989 under Order 9 Rule 2 of the Code of Civil Procedure, has been dismissed.

It appears from the record that a suit for permanent injunction was filed by the plaintiff. The said suit was dismissed by the trial Court vide its judgment and decree dated April 1, 1989. Against the judgment and decree of the trial Court, the plaintiff-appellant filed an appeal before the First Appellate Court. When the

aforesaid appeal was fixed before the First Appellate Court on December 1, 1989, then on account of non deposit of the process fee by the appellant, the said appeal was dismissed for non prosecution.

It further appears from the record that the aforesaid order passed by the First Appellate Court was intended to be challenged by the plaintiff by filing a revision petition before this Court. Consequently, the plaintiff engaged a counsel in the High Court. According to the plaintiff, all the relevant papers were handed over to the aforesaid counsel, but the said papers were returned back to him by the counsel on February 13, 1990 with an advice to move the Appellate Court itself for re-admission and restoration of the appeal. Consequently, the application was filed by the plaintiff-appellant before the Appellate Court for restoration/re-hearing of the appeal. In these circumstances, there was a delay in filing the application for re-admission of the appeal.

The Appellate Court did not accept the plea raised on behalf of the plaintiff-appellant with regard to the reasons for the delay in filing the application for readmission of the appeal. Consequently, it was held that the application filed by the plaintiff appellant for re-admission/restoration of the appeal was barred by limitation. Thus, the said application was dismissed. It is in these circumstances that the plaintiff appellant has approached this Court through the present appeal.

I have heard Shri O.P.Goyal, the learned senior counsel appearing for the appellant and Shri A.R.Takkar, the learned counsel appearing for the defendant-respondents and have also gone through the record of the case very carefully.

In my considered opinion, the view taken by the Appellate Court is absolutely hyper-technical and unjustified under the facts and circumstances of the case.

When the plaintiff appellant had challenged the judgment and decree of the trial Court dated April 1, 1989 by filing an appeal before the Appellate Court within the period of limitation and the aforesaid appeal had also remained pending for some time, then on December 1, 1989 when the said appeal was dismissed under order 9 rule 2 of the Code of Civil Procedure for non depositing of the court fee by the appellant, the plaintiff appellant had intended to file a revision petition before this Court challenging the aforesaid order. For this purpose, he had even engaged a counsel in the High Court. According to the plaintiff-appellant, all the relevant papers were handed over to the aforesaid counsel, but the said papers were returned back to him by the counsel after a period of two months with an advice to move the Lower Appellate Court itself for re-admission and restoration of the appeal. In these circumstances, the delay in filing the application for restoration had occurred. The aforesaid delay could not be treated to be intentional or malafide. The plaintiff appellant had nothing to gain by filing the application for re-admission/restoration of the appeal after the period of limitation. No vested rights had accrued in the defendants, which could not be compensated with costs.

It is well settled that rights of the parties should be adjudicated by the Court on merits of the controversy and any technical approach should be avoided. The matter has remained pending in this Court for a period of 16 years.

In these circumstances, I allow the present appeal and set aside the order dated August 11, 1990 passed by the learned Additional District Judge, Ludhiana. The first appeal filed by the plaintiff appellant against the judgment and decree of the trial Court is restored back to its original number. The Appellate Court is now directed to decide the aforesaid appeal on the merits of the controversy in accordance with law.

A copy of the order be given dasti on payment of usual charges.

October 28, 2006 (Viney Mittal)
KD Judge